

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1075

Pari-mutuel Permitholders

SPONSOR(S): Garcia

TIED BILLS:

IDEN./SIM. BILLS: SB 2004

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation Committee</u>	<u>17 Y, 0 N</u>	<u>Shoemaker</u>	<u>Liepshutz</u>
2) <u>Finance & Tax Committee</u>	<u>3 Y, 2 N</u>	<u>Noriega</u>	<u>Diez-Arguelles</u>
3) <u>Commerce Council</u>	<u></u>	<u>Shoemaker</u>	<u>Bohannon</u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

This bill amends s. 550.5251, F.S., to provide that thoroughbred permitholders who conducted racing between January 1, 1987 and January 1, 2005, would be eligible to apply for and receive thoroughbred racing days and dates as part of the "Florida Thoroughbred Racing Season." The bill changes the requirement that thoroughbred permitholders must operate the full number of racing days and dates as set forth in the issued license for both its license and permit to remain valid. The bill allows a thoroughbred racing permit to remain valid and be in full force and effect, regardless of any action or potential action brought against the permit by the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation (Division). Also, a thoroughbred permit would no longer escheat to the state for reissue.

The bill appears to be an attempt to revive the Hialeah Racing Association, LLC, thoroughbred racing permit, which was revoked by the Division on November 3, 2004, for failure to operate a full racing schedule during the prior three seasons.¹

According to the Division, the impact of this bill on state government revenues and expenditures is indeterminate due to "the numerous potential scenarios and variables that would exist within the [pari-mutuel] industry without regulatory enforcement and oversight."

This bill provides an effective date of July 1, 2005.

¹*Department of Business and Professional Regulation, vs. Hialeah Racing Association, LLC*, BPR-2004-04877, Final Order, Department of Business and Professional Regulation, November 3, 2004.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1075d.BR.doc

DATE: 4/25/2005

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: According to the Division of Pari-Mutuel Wagering of the Department of Business and Professional Regulation (Division), the issue of whether this bill reduces or increases the level of government is indeterminate. However, the language in this bill decreases the enforcement authority of the Division over violations of chapter 550, F.S., or s. 849.086 by any thoroughbred permitholder.

B. EFFECT OF PROPOSED CHANGES:

Current Law

Chapter 14832, L.O.F.,² authorized pari-mutuel wagering on thoroughbred horses, harness horses, and greyhounds. Pari-mutuel wagering was authorized for jai-alai performances in 1935³ and for quarter horses in 1941.⁴ The state has traditionally enforced a wide range of regulatory controls over the daily operations of pari-mutuel permitholders. These controls have been primarily designed to protect the health of the pari-mutuel industry, the integrity of the games, and, subsequently, the state revenues generated by wagering activities.

The original legislation authorizing pari-mutuel wagering on thoroughbreds prohibited head-to-head competition between thoroughbred tracks located in the same county. At the time, the Racing Commission in existence was required to set non-conflicting racing dates to ensure that the tracks did not operate at the same time. The governing statute at the time did not require a permitholder to operate all authorized performances and did not provide for the revocation of a permit for a permitholder's failure to operate all authorized performances. For several years, there was an annual legislative debate concerning thoroughbred racing dates.

Numerous amendments to chapter 550, F.S., have been implemented in recent years, including the repeal of the Racing Commission, repeal of the prohibition for head-to-head competition, and implementation of a uniform tax rate for thoroughbreds. In addition, current law contains provisions that require the Division to seek the revocation of thoroughbred permits and harness horse permits for failure to operate, but does not contain similar forfeiture provisions for greyhound or jai alai permitholders.⁵

Present Situation

Currently, between December 15 of each year and January 4 of the following year, a thoroughbred permitholder must file an application for licensure specifying the dates and times the permitholder intends to operate in the upcoming Thoroughbred Racing Season, which runs from June 1 of one year until May 31 of the following year.⁶ If the permitholder remains eligible to hold a permit, the Division must issue a license on or before February 15. The permitholder can amend the application until March 31 of each year, but, thereafter, the permitholder must operate a full schedule of live racing as specified in its license as a condition precedent to preserving the validity of the license and the right to

²Provisions dealing with pari-mutuel wagering are presently codified in ch. 550, F.S.

³Ch. 17074, L.O.F. (1935).

⁴Ch. 25354, L.O.F. (1941).

⁵*Legalized Gambling in Florida – the Competition in the Marketplace*, Interim Report No. 2005-155, Florida Senate Committee on Regulated Industries, November 2004.

⁶Section 550.5251, F.S.

retain the permit. If the permitholder fails to operate a full schedule of live racing for two consecutive state fiscal years, the permit becomes void and escheats to the state for reissue.⁷

On April 23, 2003, the Division filed an administrative complaint with the Division of Administrative Hearings to deny Hialeah Racing Association's (Hialeah) application for an annual racing license for the 2003-2004 Thoroughbred Racing Season.⁸ The complaint alleged that Hialeah had been licensed to conduct performances from March 17, 2002 through May 22, 2002, and from January 3, 2003 through April 13, 2003, and had not conducted any of the performances in violation of s. 550.5251, F.S. By violating these provisions, the Division alleged that Hialeah was ineligible to receive a license to conduct performances during the 2003-04 Thoroughbred Racing Season and that its license should be denied. The Division also alleged that Hialeah had lost its right to retain its permit and that its thoroughbred racing permit should be revoked. The Administrative Law Judge entered a Recommended Order denying the license and revoking the permit.⁹ The decision is currently on appeal to the Third District Court of Appeal.¹⁰

Effect of Proposed Legislation

This bill amends s. 550.5251, F.S., to provide that thoroughbred permitholders who conducted racing between January 1, 1987 and January 1, 2005, would be eligible to apply for and receive thoroughbred racing days and dates as part of the "Florida Thoroughbred Racing Season." The bill changes the requirement that thoroughbred permitholders must operate the full number of racing days and dates as set forth in the issued license for both its license and permit to remain valid. The bill allows a thoroughbred racing permit to remain valid and be in full force and effect, regardless of any action or potential action brought against the permit by the Division. Also, a thoroughbred permit would no longer escheat to the state for reissue. However, a permitholder's failure to operate a full schedule of live racing would remain a basis for discipline similar to greyhound and jai alai permitholders.

According to the Division, this bill may affect the regulation and operation of the pari-mutuel industry in the following ways:

- The Division may be unable to adequately plan for and staff events to complete all licensing, sample collection, and other regulatory functions;
- It may be difficult for horsemen and horse associations to timely deliver an adequate number of racing animals;
- Breeders' and owners' awards may be unfairly disbursed; and
- It may create confusion for patrons.

In addition, the Division maintains that the bill decreases the enforcement authority of the Division over violations of ch. 550, F.S., or s. 849.086, F.S., by any thoroughbred permitholder. Furthermore, the Division indicates that it may be unable to accomplish its full regulatory mission as a result of insufficient enforcement authority.

C. SECTION DIRECTORY:

Section 1.

⁷Section 550.09515(3)(a) and (b), F.S.

⁸ *Department of Business and Professional Regulation, vs. Hialeah Racing Association, LLC*, Administrative Complaint and Notice to Deny License, DBPR Case No. 2003004303, April 23, 2003.

⁹ *Department of Business and Professional Regulation, vs. Hialeah Racing Association, LLC*, Recommended Order, Case No. 03-1459, Division of Administrative Hearings, September 30, 2004.

¹⁰ *Hialeah Racing Association, LLC, vs. Department of Business and Professional Regulation*, No. 3D04-3001 (Fla. 3d DCA).

Subsection 1. Amends the dates under which each thoroughbred permitholder must have conducted operations to apply for and annually receive racing days and dates from January 1, 1987 to January 1, 2005.

Subsection 2. Removes the provision that a thoroughbred permitholder must operate the full number of days authorized as a condition precedent to the validity of its license and the right to retain its permit.

Subsection 3. Provides that each permitholder referenced in subsection (1) is validated and continues in full force and effect "irrespective of any action that the division may take or may have heretofore taken against the permit."

Section 2. Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

According to the Division, the impact of this bill on state government revenues is indeterminate due to "the numerous potential scenarios and variables that would exist within the [pari-mutuel] industry without regulatory enforcement and oversight."

2. Expenditures:

According to the Division, the impact of this bill on state government expenditures is indeterminate due to "the numerous potential scenarios and variables that would exist within the [pari-mutuel] industry without regulatory enforcement and oversight."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Thoroughbred permitholders may benefit due to the greater freedom and flexibility to operate the race meet. Also, the bill would allow the Hialeah Racing Association, LLC, to apply for a license to conduct live racing for the Thoroughbred Racing Season and retain its thoroughbred racing permit.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES